
(2010) 02 DEL CK 0016

In the Delhi High Court

Case No : Writ Petition (C) No. 7406 of 2009

Yogendra Prakash Jauhari

APPELLANT

Vs

Bar Council of India and Others

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Citation : (2010) 02 DEL CK 0016

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant; Sanjeev Sachdeva and Preet Pal Singh, Sudhanshu Batra and Bhuvan Gugnai for R-2, Gagan Gupta, for R-5 and Vivekanand Rana, for R-4 and R-7, for the Respondent

Judgement

S. Muralidhar, J.—The challenge in this petition is to the orders dated 19th July 2008, 12th October 2008 and 24th December 2008 passed by the Bar Council of India ("BCI") as well as to the decision dated 27th November 2005 of the Bar Council of Punjab & Haryana ("BCPH") and the resolution dated 11th/12th February 2006 of the BCI concerning the enrolment of the Petitioner as an Advocate.

2. In 1992 the Petitioner was appointed as a steno-typist in the court of the Sessions Judge at Gurgaon, Haryana. In 1997 the Petitioner was attached to the court of the Judicial Magistrate 1st Class ("JMIC"), Nuh. It is alleged by the Petitioner that he suffered harassment at the hands of the JMIC and requested for a transfer on 17th September 1997. However certain orders adverse to the Petitioner were passed by the JMIC which according to the Petitioner were set aside by the Sessions Judge, Gurgaon. It is stated that an FIR No. 3 dated 2nd April 1991 under the Prevention of Corruption Act, 1988 ("PCA") was registered against the Petitioner on false pretexts. He was granted bail on 7th April 1999. It is not denied that ultimately the Petitioner was convicted in the said case and his services were terminated. However his termination order was made conditional upon the outcome of the appeal filed by the Petitioner in the High Court of

Punjab & Haryana. The High Court, while admitting his appeal, suspended the sentences awarded to the Petitioner.

3. It is stated that while being posted in the Court of the District and Sessions Judge, at Ferozpur Jhirka, during the session 1992-95 the Petitioner sought permission of the competent authority and applied for a three-year regular degree course in law from D.S. College, Aligarh. He claims that the classes for the course at the said college used to be held in the evening/late evening hours. On 13th May 2005 the Petitioner filed an application for enrolment before the BCPH. However the Petitioner claims to have "got hints from certain sectors" that his application for enrolment would be turned down on account of the pressure brought on the BCPH by the JMJC. Accordingly, the Petitioner applied to the Bar Council of Delhi ("BCD") on 30th June 2005. The BCD enrolled the Petitioner as an Advocate with effect from 7th July 2005 and he was allotted Enrolment No. D-519/05. After his enrolment with the BCD, the Petitioner wrote to the BCPH seeking withdrawal of his application.

4. On 16th September 2005 the Bar Association of Nuh through Shri Zakir Hussain, Advocate lodged a complaint against the Petitioner with the BCD in which it was stated that pursuant to his arrest in the PCA case, the Petitioner remained in judicial custody for one month and upon completion of trial he was convicted. The Petitioner had obtained law degree during the period of his suspension from service. The BCPH had refused to enroll him as he was convicted in the aforementioned case. Moreover the Petitioner had concealed before the BCD that he had applied to the BCPH earlier.

5. On 27th November 2005 the BCPH by a resolution (which has been challenged in this petition) proposed to the BCI that the Petitioner's enrolment should be refused. On this basis by a resolution dated 11th/12th February 2006, the BCI passed a resolution accepting the recommendation of the BCPH. Two more complaints dated 13th and 14th February 2008 were filed against the Petitioner with the BCPH. Since these complaints could not be decided within the stipulated period, they were transferred to the BCI. On 19th July 2008 the Disciplinary Committee of the BCI proposed the removal of the Petitioner's name from the rolls of the BCD. Thereafter by an order dated 12th October 2008 passed in Removal Proceedings No. 4/2008, the BCI directed removal of the Petitioner's name from rolls of the BCI. The petitioner's Review Petition was dismissed on 24th December 2008. All of the aforementioned resolutions and orders have been challenged by the petitioner in this petition.

6. Pursuant to the notice issued in the petition, replies have been filed by both the Chairman of the Committee of the BCI, Respondent No. 5 and the BCI. It is pointed out by the BCI that right to enrolment is only a statutory right and is not a fundamental right. It is not automatically granted upon a person merely fulfilling the eligibility conditions. This is made clear in Section 24 of the Advocates Act, 1961 (AA). It is emphasized that attendance of lectures and tutorials in the law degree course is an essential part of the training of a law

student as pointed out by the Supreme Court in *Satish Kumar Sharma Vs. The Bar Council of Himachal Pradesh*, . It is submitted that a comprehensive reading of the Sections 24 and 49 of the Act read with Rules 1(i)(c) and Rule 4 in part 4 of the Bar Council of India Rules ("BCI Rules") showed that the BCI as the apex professional body is concerned with the standards of the legal profession. It prescribes norms for those seeking entrance to the profession. It is submitted that the college in which the Petitioner claims to have been admitted is in Aligarh which is at least 170 km from the place of his posting at Firozpur Jhirka. Since the travel time between the place of work and the college would take four hours one way and since the Petitioner was a full time employee who was not given leave to attend classes, it is obvious that the LL.B degree obtained by the Petitioner was without attending regular classes. Therefore the Petitioner was not entitled to be enrolled as an Advocate.

7. More seriously it is pointed out that in the enrolment form filed with the BCD the Petitioner did not disclose the details of his conviction in a criminal case. Further in his enrolment application form submitted to the BCD, the Petitioner did not disclose that he had already applied for enrolment with the BCPH and that his application there was pending. He in fact made a misdeclaration in this regard in Column 20 of the enrolment form. It is submitted that this was misdeclaration of an essential particular within the meaning of the proviso to Section 26AA and therefore for the above reasons the Petitioner's name was rightly removed from the BCD.

8. In his rejoinder the petitioner has placed a copy of the attendance certificate issued by the D.S. College at Aligarh in which it is mentioned that the Petitioner had completed the requisite attendance as per the rule of the University i.e. 75% as per college record. It is then pointed out that there were other people who were employees of the judicial department of the Government of Haryana posted in Gurgaon and during their posting they completed their three years' LL.B in like manner. It is submitted that while no action was taken against those persons, the Petitioner was being singled out for discriminatory treatment.

9. Mr. Manoj Sharma, learned Counsel for the Petitioner, submitted that there is no provision in the AA which prevents a person from applying for enrolment simultaneously to two different State Bar Councils. Reference is made to Rules 1 and 2 of Chapter II Part V of the BCI Rules. Secondly, it is submitted that non-furnishing of information to the BCD about having filed an application for enrolment before the BCPH was not a material concealment warranting the recall of his enrolment. It is submitted that if at all a person is enrolled in two State Bar Councils, the Rules require that he has to surrender the enrolment certificate of one of them. The petitioner had after being enrolled with the BCD, withdrawn his application before the BCPH. There was therefore no concealment of any material facts warranting the resolution of the BCPH and the impugned decision of the BCI. Without prejudice to these contentions it is submitted that the punishment of removal from the rolls was disproportionate and harsh. It is

further urged that the Petitioner's written brief of arguments was not considered when his case was finalized by the BCI at the meeting held on 12th October 2008. The notings in the file show that the decision to remove the Petitioner from the rolls was taken on 12th September 2008 itself.

10. On behalf of the BCI, Mr. Sanjeev Sachdeva, learned Counsel submits that there was no question of the Petitioner having 75% attendance and therefore such a law degree obtained by the Petitioner could not be acted upon. It is further submitted that the Petitioner far from giving a satisfactory explanation for suppressing the material facts before the BCD both as regards his conviction in a criminal case as well as an application made before the BCPH which was pending as on that date, made wild allegations against the Chairman of the Disciplinary Committee of the BCI, i.e. Respondent No. 5 herein.

11. This Court has considered the above submissions. The scheme of the AA indicates that there is a central body known as the BCI and there are different State Bar Councils. As far as Delhi is concerned, it initially was a Union Territory and Section 3(1)(f) of the AA provided that for the Union Territory of Delhi there would be separate Bar Council which would for all purposes be a state Bar Council. One of the functions of the State Bar Council u/s 6(1)(a) is to admit persons as Advocates on its rolls. The other functions include entertaining and determining cases of misconduct against Advocates and to do all other things necessary for the discharge of its functions. As far as the BCI is concerned among its principal functions is to lay down standards of professional conduct for the Advocates and to lay down the procedures for its Disciplinary Committee and the Disciplinary Committee of each of the State Bar Councils. The composition of the Disciplinary Committee is set out u/s 9 of the AA. Section 17 requires the State Bar Council to maintain a roll of Advocates. u/s 18 a person whose name is entered as an Advocate in the roll of any State Bar Council can make an application to the BCI for transfer of his name "from the roll of that Bar Council to the roll of any other Bar Council" and on receipt of such application, the BCI shall direct that the name of such person shall be removed from the first mentioned State Bar Council and enrolled to the other Bar Council and the State Bar Council shall comply with this direction. Under the proviso to Section 18, the BCI has the power to reject any application if it has not been made bonafide, or by a person against whom any disciplinary proceedings is pending, after complying with the principles of natural justice. u/s 24 of the AA, for being admitted to as an Advocate on a State roll, a person has to be a citizen of India, has to have completed 21 years of age, has to have obtained a degree in law and should fulfill other conditions as may be prescribed in the rules made by the State Bar Council. Section 24A stipulates that no person shall be admitted as an Advocate on a State roll if he is convicted of an offence involving moral turpitude or if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 provided that the disqualification shall cease to have effect after a period of two years has elapsed since his release.

12. Sections 26 and 27 of the AA which are material for the purposes of the present case read as under:

26. Disposal of application for admission as an Advocate.--

(1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provisions of Sub-sections (2) and (3), [and to any direction that may be given in writing by the State Bar Council in this behalf] such committee shall dispose of the application in the prescribed manner:

[Provided that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll of advocates by misrepresentation as to an essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.]

(2) Where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under Sub-section (2) in conformity with the opinion of the Bar Council of India.

(4) Where the enrolment committee of a State Bar Council has refused any application for admission as an advocate on its roll, the State Bar Council shall as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name, address and qualification of the person whose application was refused and the grounds for the refusal.

27. Application once refused not to be entertained by another Bar Council except in certain circumstances. Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such person as an advocate on its roll, except with the previous consent in writing of the State Bar Council which refused the application and of the Bar Council of India.

13. What calls for determination in the first place is whether the Petitioner could make an application to the BCD for enrolment as Advocate even while a similar application made to the BCPH was pending and further that still he was mandatorily required to disclose this fact in his application filed with the BCD. As far as the factual matrix is concerned, there is no denial that in the application filed before the BCD in Column 20 the Petitioner wrote "N.A." ("not applicable") against the column seeking information whether he had made a previous application for enrolment as an Advocate. He also wrote "No" in the same column. The date of application with the BCD was 5th July 2005. On that day the Petitioner's application with the BCPH was pending consideration. Clearly,

therefore, the Petitioner consciously sought to mislead the BCD by holding out that he had in fact not made any application previously to a State Bar Council.

14. This Court is unable to agree with the contention of the learned Counsel for the Petitioner that the above was at best a concealment and not a misdeclaration as to an "essential" fact as contained in provision to Section 26. If the Petitioner had not written anything at all in the said column it could still be argued that it was perhaps only a concealment and not a misdeclaration. However, the Petitioner has deliberately written "N.A." and "No" and therefore there can be no doubt that it is a misdeclaration. Further giving the context of Section 27 where it is important for a State Bar Council to know of the status of the application made by the same person before any other State Bar Council, this fact is no doubt an "essential" fact within the meaning of the proviso to Section 26 of the AA. Even where such earlier application before another State Bar Council is pending, there can be developments that might take place between the making of the subsequent application and its being taken up for consideration and such development may have a material bearing on the decision of the State Bar Council to which the subsequent application is made. Further, the Petitioner furnished to the BCD an affidavit dated 14th June 2005 undertaking to disclose all the information asked in the application form. Therein the Petitioner stated that any omission to disclose or any misrepresentation "shall render my application invalid and liable to be cancelled." For all of the above reasons, this Court fully concurs with the findings of the BCI that the Petitioner is guilty of suppression of an "essential" fact in the application made by him to the BCD.

15. There is merit in the contention of the counsel for the BCI that the LL.B degree obtained by the Petitioner was not accepted since the BCI's Rules concerning attendance were not fulfilled. Under Rule 1(i)(c) Section B, Part IV of the BCI Rules, an applicant has to fulfill the condition of "regular attendance". Rule 3 of Section B, Part IV of the BCI Rules reads as under:

3. The students shall be required to put in a minimum attendance of 66% of the lectures on each of the subjects as also at tutorials, moot courts and practical training course:

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law and the Principal of Law Colleges may condone attendance short of those required by the Rule, if the student has attendance 66% of the lectures in aggregate for the semester or examination as the case may be.

The letter dated 25th August 2005 from the Office of the District & Sessions Judge, Gurgaon showed that during 1992 to 1995 the Petitioner did not avail of any study leave. The service record of the Petitioner showed that he availed of 12 days" leave between 1992 and 1995. Although before the BCI shows the Petitioner did not place any document of the law college showing that it was working during summer vacations, the Petitioner has sought to produce along

with the present petition an attendance certificate issued by the Dharam Samaj College, Aligarh. The certificate raises more questions than it answers because it asserts that the Petitioner completed the requisite attendance as per the rules of the University i.e. 75% as per the college record. It is indeed surprising that while his service record shows that he availed of only 12 days" leave altogether, the above certificate asserts that he had 75% attendance. It is plain, therefore, that the Petitioner was unable to satisfy the BCI that he in fact, attended the minimum number of classes at a college in Aligarh in UP 170 km away while working in the District & Sessions Court at Ferozpur Jhirka, Haryana. The decision of the BCI to strictly enforce the above rules of attendance is consistent with the decisions of the Supreme Court in Baldev Raj Sharma Vs. Bar Council of India and Others, ; Bar Council of India and another Vs. Aparna Basu Mallick and others, and by this Court in S.N. Singh Vs. Union of India (UOI) and Others, . If certain others were granted enrolment wrongly despite not fulfilling the attendance requirement, it is for the concerned State Bar Council to take corrective action. It by no means can give a right to the Petitioner to seek parity with such persons.

16. The third difficulty in the way of the Petitioner is his having been convicted in a criminal case involving moral turpitude. The fact of the matter is that the Petitioner was convicted by the order dated 25th February 2005 of the Special Judge, Chandigarh u/s 7 of the PC Act and sentenced to imprisonment for one year with a fine of Rs. 500/- and in default of payment of fine to further imprisonment of two months. A similar sentence has been passed upon his conviction u/s 13(1)(d) read with Section 13(2) PC Act. The Punjab & Haryana High Court when admitting the appeal on 15th March 2005 only granted him bail but did not suspend the conviction itself. u/s 24A no person shall be admitted as an Advocate on a State roll, if convicted of an offence involving moral turpitude. Two years have not elapsed since his release. That event is yet to occur. Therefore, the Petitioner was not entitled to be enrolled even on this ground.

17. For all the aforementioned reasons, this Court finds no ground having been made out for interference with the decision of the BCI. The petition is accordingly dismissed with costs.

18. Before concluding this, the Court would like to emphasise that it is important for the State Bar Councils to deal with applications made for enrolment of a person as an Advocate with care and attention. Possessing a law degree from a recognized institution although mandatory will by itself not suffice. The State Bar Council or the BCI as the case may be will, apart from verifying with the concerned University the authenticity of the certificate, also call for a copy of the record of the applicant's attendance. Further, each State Bar Council should preferably maintain a website on which details of all pending applications for enrolment and their current status should be posted. This will enable any other State Bar Council to immediately verify if the applicant seeking enrolment has in fact applied to any other State Bar Council. Secondly, in the application for

enrolment, certain columns must be made mandatory for being filled up by applicants including Column 20. An applicant must be made to disclose whether the application made to any other State Bar Council is pending and if disposed of, with what result. These are suggestions to the BCI and the State Bar Council who may suitably incorporate the changes by amending the forms and the applicable rules.

19. A certified copy of this order be sent to the Secretary, BCD, the Secretary BCPH and the Secretary of the BCI within a period of seven days.